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*Genuine*

May 14, 1980

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ARIZONA ATTORNEY GENERAL

Department of Public Safety Local Board  
Public Safety Personnel Retirement System  
c/o Arizona Department of Public Safety  
Post Office Box 6638  
Phoenix, AZ 85005

Re: I80-079 (R79-216)

Dear Members of the Board:

We are writing in response to your request of July 24, 1979, that we consider three questions concerning the Public Safety Personnel System. Each question deals with a different fact situation; therefore, we shall answer each question separately.

Your first question is whether a deputy sheriff, who was covered by the State Retirement System (hereinafter "State System") while he was employed with a county sheriff department, may have his State System credits and employer and employee contributions transferred to the Public Safety Personnel Retirement System (hereinafter "Public Safety System") upon becoming employed by the Department of Public Safety (hereinafter "DPS"). We understand that the deputy sheriff in question transferred to DPS from the county at a time when the county had not yet elected to participate in the Public Safety System.

The Public Safety System does not provide by statute specifically for the transfer of State System credits and contributions to the Public Safety System when the former employer has not at the time of the change of employment joined the Public Safety System. The State System does not provide specifically for such a transfer either.

We previously have advised that the service credits and employer and employee contributions of employees transferring to positions covered by the Public Safety System with the same employer were to be transferred into the Public Safety System and that thereafter, absent subsequent transfers, retirement benefits for such employees were to be determined only under the Public Safety System. Specifically, in Ariz.Att'yGen.Ops. No. 74-26 and No. 77-206, we advised the Arizona State Retirement System Board that employees of the Game and Fish Department who were employees on July 1, 1971, when the Game and Fish

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Department joined the Public Safety System, but who then occupied positions not included in the classes of employees covered by the Public Safety System, and who thereafter transferred into positions covered by the Public Safety System should have their service and employer and employee contributions transferred from the State System to the Public Safety System. We think that those opinions are consistent with and find their support in A.R.S. § 38-851, which applies only to participation of new employers and their employees in the Public Safety System. However, neither A.R.S. § 38-851 nor our previous opinions constitute authority for the transfer contemplated in your request.

Three provisions of the Public Safety System provide for the transfer of service credits within or without the Public Safety System. None of these provisions applies, however, to the situation in question. A.R.S. § 38-849 authorizes a member of the Public Safety System who received a severance benefit under A.R.S. § 38-846 upon termination of employment to reinstate his prior service credits by re-depositing his accumulated contributions upon being re-employed within two years after his termination date.

A.R.S. § 38-853 provides that a member of the Public Safety System who terminates employment and accepts within 120 days a position with the same or another employer covered by the Public Safety System shall have his prior service credits and contributions transferred to his new employer.

Both A.R.S. §§ 38-849 and 38-853 deal with transfers or changes of employment within the Public Safety System. Neither of these provisions is applicable, however, to an employee who leaves a position with an employer which does not then participate in the Public Safety System.

A.R.S. § 38-857 also is not relevant to the situation in question, because the deputy sheriff is not transferring to a position with an employer outside of the Public Safety System. A.R.S. § 38-857 provides for the transfer of Public Safety System service credits and contributions to another retirement system when a member of the Public Safety System "changes employment or transfers or is assigned" to a position covered by another retirement system.

Being unable to find statutory authority for the transfer in question, we are constrained to say that the transfer of the former deputy's service and contributions accounts may not be

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accomplished. We suggest that the overall problem of transfers from the State System to the Public Safety System be addressed to the Legislature.

Your second question is whether A.R.S. § 38-857 permits a member of the Public Safety System who terminated his employment with DPS and left his contributions in the Public Safety System to have his prior service credits and contributions account transferred to his new employer, if the member is re-employed by an employer also participating in the Public Safety System but more than 120 days<sup>1</sup> after terminating his previous employment. A.R.S. § 38-857 is not applicable to this situation. A.R.S. § 38-857 applies only to changes of employment to positions covered by another retirement system. Examples of other retirement systems for purposes of A.R.S. § 38-857 are the State System and the optional programs established pursuant to A.R.S. § 15-725.02.

Your third question arises from the following circumstances. In 1974, certain deputy sheriffs covered by the State System left their positions with a county and withdrew their employee contributions in the State System. They now are employed by DPS and are members of the Public Safety System. In 1978 that county elected to participate in the Public Safety System pursuant to the terms of A.R.S. § 38-851. In 1978, the county executed a joinder agreement on behalf of "all certified personnel [sheriff and deputy sheriffs]." The deputy sheriffs who left the employ of that county now would like to deposit with the Public Safety System the contributions that they withdrew from the State System and have their prior service credited to their accounts in the Public Safety System.

The question is whether A.R.S. § 38-851 contemplates that these former deputy sheriffs, who were employed by DPS at the time the county's joinder agreement was executed, may so deposit their State System contributions and receive prior service credits under the Public Safety System.

Under A.R.S. § 38-851, a county or other political subdivision may become a participating employer in the Public Safety System on behalf "a designated eligible employee group"

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1. A.R.S. § 38-853 provides that a member of the Public Safety System who terminates employment and accepts another position covered by the Public Safety System within 120 days shall have his prior service credits and contributions transferred to his new employer.

Department of Public Safety Local Board  
Public Safety Personnel Retirement System

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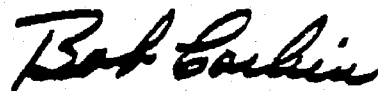
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if the governing body of the political subdivision properly executes a joinder agreement with the fund manager. The joinder agreement must accept the provisions of the Public Safety System and bind the "designated eligible employees" thereto.

Pursuant to A.R.S. § 38-851.C, the county must designate "the departments, groups or other classifications of public safety employees which shall be eligible." We read this to mean that a county may designate a group or class of employees consisting of present and future employees falling within the class of employees designated as eligible to participate in the Public Safety System. A.R.S. § 38-851 does not provide the means by which former employees may receive service credits under the Public Safety System. It appears to us that A.R.S. § 38-851 has nothing whatever to do with former employees of a political subdivision becoming a participating employer in the Public Safety System.

We note that the former sheriff's deputies also were not eligible to redeem their prior service under the provisions of Chapter 146, Laws of 1975, because their previous employer did not commence participation in the Public Safety System until after June 30, 1976, the date on which Chapter 146 expired. We suggest that relief for the former deputy sheriffs be addressed to the Legislature, as were the situations encompassed in Chapter 146.

Sincerely,



BOB CORBIN  
Attorney General

BC:FWS:lfc